

City Council angry over cable boxes

- Warner is asked to halt rate hike pending study.
Councilmen suggest people bar installers from homes

BY JIM QUINN
Beacon Journal staff writer

Hostilities between the city of Akron and Warner Cable escalated Monday when the City Council passed a formal complaint about the utility and asked it to stop an unpopular rate hike until the dispute is resolved.

The battle comes after weeks of debate over Warner Cable's conversion to a new, upgraded system capable of more channels and new services. As each home is switched to the new system, the home gets a new converter box which costs an extra \$3.60 a month.

Warner Cable President Stephen Fry said the box is necessary to get improved service — which the city mandated. He said the monthly charge goes toward paying the \$180 cost of each box.

"I don't believe it," Councilman Don Mittiga, D-2, said.

Council members will try to hire an expert to see if the company's claims are true. One councilman urged residents to refuse to allow Warner Cable installers into their home.

"The voters are mad as hell,"

Mittiga said Monday. He told members, "They started in my neighborhood, but they are coming to your's next."

Mittiga's proposal passed 11-1, with only Councilman Michael Williams, D-4, voting no. "I don't like seeing us getting into an adversarial relationship with Warner Cable," Williams said.

But adversity was just fine with Councilman John Valle, D-at large. Valle said he would forbid installers from entering his home as scheduled next week, and he urged residents to do the same when the upgrade arrives in their neighborhood. He offered this tactic as a way to delay the unpopular new service.

The new boxes aren't compatible with cable-ready television sets, and after the conversion viewers have trouble taping one channel while viewing another.

"People are paying more and getting less," said Mittiga, who represents the section of Akron where the conversion began.

Council President David Bryant, D-7, said he wants the

See CABLE, Page B4

CABLE

- Politics influencing council's television fight

Continued from Page B1

council to hire an expert in cable regulations and technology to review the claims.

Bill Farmer, vice president of operations for Warner Cable, said the company will meet with city officials as soon as possible to discuss the impasse. "We don't see ourselves in an adversarial relationship here," said Farmer, explaining that the conflict stems from new federal requirements.

Two political realities help explain the council's sudden combativeness.

Several members said they were concerned about last week's announcement that mayoral aide William Jasso will return to Warner Cable. Jasso worked for the company before being hired by the city six years ago.

"This looks bad," said Council-

man Bruce Kilby, D-10, saying the situation points out a need for a code of ethics for public officials.

Jasso acknowledges that some citizens will suspect he's selling influence to the utility, so he pledged to refrain from dealing with Akron officials for a "cooling off" period after leaving City Hall March 25.

Also, Mittiga is waging a fierce battle to retain his seat on the council. Mittiga and former Councilman Warner Mendenhall are battling for victory in the May primary in Ward 2.

The battle became a lot more obvious over the weekend when campaign signs appeared. One of Mendenhall's signs was in the yard of former Councilman Dale Cantrell, who was forced from office last year after being convicted of operating an illegal bingo game.

Mittiga's complaint now goes to the Federal Communications Commission. He said he will try to persuade the council to use money from Warner Cable's franchise fee to hire a cable expert, and to see if there's a way to stop the conversion.

AKRON BEACON JOURNAL
3-22-94

Sending a message to Warner Cable

In reference to the March 15 article "Warner president defends new system," Stephen Fry says the city of Akron told him to build the system this way. I would like to see where the city told Warner Cable to scramble its signal so current cable-ready TVs and VCRs would be obsolete and not operate as designed.

Warner Cable is intentionally scrambling its signal so that we must use its converter box. I believe the reason is two-fold.

Warner Cable is trying to circumvent the legislation that allows its customers to use as many televisions as they like without any additional charges. If Warner Cable is allowed to do this, it will cost \$3.45 plus 15 cents for the remote for each TV (to watch anything other than channels 2 through 14).

Second, if we have Warner Cable's converter box, we will be more likely to use the pay-per-view option on an impulse instead of calling in advance to order movies or special events. This is added to the bill each month.

Fry would like us to believe that Warner Cable is improving our service. If that is so, why are we paying more for the same service? (Yes, Warner Cable has added a few channels for an additional 95 cents).

That does not allow us to watch any channel and record any channel at the same time, or allow us to use our picture in the picture-in-picture option, as we did before the converter box.

Those who are unhappy with this change should call their elected officials or tell Warner Cable that they want their basic service only, at \$8.75 per month. The loss of income to Warner Cable will make more impact than anything else.

GORDON REESE
Tallmadge

New cable-TV services should be optional

Nice try, Stephen Fry, putting the blame on Akron City Council and the FCC for Warner Cable forcing converter boxes on customers. Sorry, but I don't buy it.

I don't see other cable companies in the area following Warner's example.

So Warner wants to provide more services? Fine. Why not make it optional, such as Warner does for premium channels? Let those who want the new converter box have it, but let the rest of us use our cable-ready TVs and VCRs.

If Warner Cable insists on the converter box, this is one customer who will unplug the cable and hook up the antenna.

FRANK PHILLIPS
Stow

3-23-94

"VOICE OF THE PEOPLE"
AKRON BEACON JOURNAL
3-22-94

BY _____ DATE _____
CHKD. BY _____ DATE _____

SUBJECT One problem is
Cable Cost not cable
rates.

ET 93-7
SHEET NO. _____ OF _____
JOB NO. _____

Warner Cable Monthly Costs - 40 Channels less Prem.

DOCKET FILE COPY ORIGINAL

My 97 year old
Mother →

Bartha Wootton
(Cuyahoga Falls)

G.V. Wootton
(Fairlawn)

March, 1993	23.15	29.19 (includes Extra Basic)
May, 1993	23.15	29.19 "
July, 1993	23.63	25.88 "
Sept., 1993	23.63	25.50
Nov., 1993	23.63	23.63
Jan., 1994	23.63	23.63

Under new Warner schedule for
essentially the same service - Monthly
Costs would be as follows:

Basic Service:	8.75	(CH 2-14)
Standard Tier:	11.44	(CH 15-31)
People's Choice:	2.31	(CH 35-37)
Expanded A la Carte:	<u>.48</u>	(C-Span II)

Total Base Cost: 22.98 /mo.
Add Franchise Fee: 1.15
Total 24.13 /mo.

Add Cost 1 Box: 3.60
Add Franchise Fee: .18

Total: 27.91 /mo.

Base Cost increase over present = $(27.91 - 23.63) = 4.28$

% Increase in Monthly Cost = $\frac{4.28}{23.63} \times 100 = 18.1\%$

G.V. Wootton needs 3 Boxes (minimum), in which
case these increases are:

Cost increase: $(35.47 - 23.63) = 11.84 /mo.$

% Increase: $\frac{11.84}{23.63} \times 100 = 50.1\%$

Boy! is this inflation or what? for no increase in
service!

POSITION NUMBERS	SUMMER-1993	WINTER-1993-94	FUTURE-1-ABJ	FUTURE-2	FUTURE-3
2	WKYC-CH 3	NC	NC		
3	PTL	WDLI-CH-17	NC		
4	WAKC-CH 23	NC	NC		
5	WVIZ-25-PBS	NC	NC		
6	?	WUAB-43	NC		
7	Weather./Pub. Ann.	WAI-29	NC		
8	?	WBAX-55	NC		
9	NEWS-5	WJW-8	NC		
10	PBS-45/49	NC	NC		
11	WJW-8	NEWS-5	NC		
12	Home Shopping	WQAC-67	NC		
13	WUAB-43	WQIQ-19	NC		
14	ESPN	QVC	QVC		
15	TNT	NC	BET		
16	CNN/Headline News	USA	VH-1		
17	CNN/Headline News	NC	CNBC		
18	A&E?	A&E	CNN-News		
19	Lifetime	NC	USA		
20	C-Span	NC	Nickelodeon		
21	CNN	NC	NC		
22	P Cinemax	ESPN	Lifetime		
23	Disney?	NC	MTV		
24	Family?	Nickelodeon	ESPN		
25	Discovery	PPV Menu	TNT		
26	?	MTV	A&E		
27	P HBO	NC	Family		
28	Nashville	NC	Weather		
29	?	Family	Nashville		
30	P Movie	Sports Ohio	NC		
31	USA?	Discovery	C-Span		
32	WTBS	NC			
33	P Movie	Am. Movie Classics			
34	CNBC	NC	Discovery		
35	C-Span II/BET	NC	Am. Mov. Class.		
36	MTV	VH-1	WTBS		
37	Pay/View	NC	WGN		
38	Pay/View	NC	ESPN-2		
39		Pay/View Menu	Comedy		
40			Cartoon		
41			E!		
42			Country Music		
43			Learning CH		
44			Bravo		
45			Court TV		
46			C-Span II		
47			VISN		
48			Local Prog.		
49			PPV-Parvans		
50			PPV-1		
51			PPV-2		
52			Movie Channel		
53			Cinemax		
54			Disney		
55			Showtime		
56			HBO-1		
57			HBO-2		
58			HBO-3		
59			Showtime-2		
60			FLIX		
61			PPV-3		
62			PPV-4		
63			etc.		

Authority: Akron Beacon Journal

NC = No Change

DOCKET FILE COPY ORIGINAL

Channel Shuffling

Why is there a gap here?

BY: _____ DATE: _____
 CHKD. BY: _____ DATE: _____
 SHEET NO. _____ OF _____
 SUBJECT: _____
 JOB NO. _____

Warner Cable of Akron, OH Programming

Fairlawn, OH / Warner Cable Franchise Agreement

ORDINANCE 19 -6-

OFFERED BY MAYOR KOSTOFF

1987-65 DOCKET FILE COPY ORIGINAL

ET 93-7

GRANTING A NON-EXCLUSIVE FRANCHISE TO WARNER CABLE COMMUNICATIONS INC. TO ERRECT, INSTALL, ETC., AND USE A CABLE COMMUNICATIONS SYSTEM IN, UPON, ETC., OR IN ANY MANNER CONNECTED WITH THE STREETS, LANES, AVENUES, ETC., AND OTHER PUBLIC PLACES IN THE CITY OF FAIRLAWN, OHIO, FOR THE PURPOSE OF TRANSMISSION AND DISTRIBUTION OF TELEVISION SIGNALS AND OTHER CABLE COMMUNICATIONS SERVICES TO THE INHABITANTS OF SAID CITY, AND OTHER PURPOSES, FOR A PERIOD OF TWENTY (20) YEARS, AND REGULATING THE SAME.

WHEREAS, granting a non-exclusive franchise to WARNER CABLE COMMUNICATIONS INC. to erect, install, construct, reconstruct, maintain, operate, dismantle, test, repair, replace, retain and use a cable communication system in, upon, along, across, above, over, under or in any manner connected with the streets, lanes, avenues, sidewalks, alleys, bridges, and highways, and other public places in the City of Fairlawn, Ohio, as the same now or in the future may exist, for the purpose of transmission and distribution of television signals and other cable communications services to the inhabitants of said City, and other purposes, for a period of twenty (20) years, and regulating the same.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FAIRLAWN, OHIO:

SECTION 1: SHORT TITLE

This ordinance shall be known and may be cited as the Fairlawn, Ohio Cable Communications Franchise.

SECTION 2: DEFINITIONS

For the purposes of the Ordinance the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense included the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

A. "Additional Services" shall mean any communications services other than Regular Subscriber Service and Pay Television provided by the Company over the Cable Communications System either directly or indirectly, including, but not limited to, burglar alarm, data or other electronic intelligence transmission, facsimile reproduction, meter reading and home shopping, also any fees or charges emanating from any programming.

B. "Anniversary Date" shall mean the date on which this franchise ordinance becomes effective.

C. "Basic Service" shall mean the lowest-priced tier of Regular Subscriber Service regularly provided to Subscribers on the system from and after the time the Company completes the expansion of the Cable Communications System to thirty-five (35) channel capacity.

D. "Cable Communications System" or "System" shall mean a system of Company owned or operated cables, wires, lines, towers, wave guides, microwave and laser beams, and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying and distributing audio, video and other forms of electronic or electric signals to and from Subscribers and locations in the City.

E. "Channels" shall mean a band of frequencies, six megahertz wide, in the electro-magnetic spectrum which is capable of carrying either (1) audio-video television signals and non-video signals or (2) non-video signals.

F. "City" shall mean the City of Fairlawn, Ohio, as the same now or in the future may exist.

G. "Community Service Programming" shall mean programming produced by local government, libraries, schools and institutions of higher learning, and/or the public for exhibition on the Cable Communications System.

H. "Company" shall mean WARNER CABLE COMMUNICATIONS INC., or any person who succeeds WARNER CABLE COMMUNICATIONS INC., as franchisee in accordance with the provisions of this franchise.

I. "Converter" shall mean an electronic device which converts signals to a frequency not susceptible to interference within the television receiver of a Subscriber and which, by an appropriate channel selector, also permits a Subscriber to view all signals delivered at designated dial locations.

J. "Effective Date", for the purposes of this franchise agreement, shall mean thirty (30) days following the passage of this ordinance or the date upon which the Company files a notarized, unconditional acceptance of all of the terms and conditions contained herein and pays to the City the acceptance fee listed in Exhibit A hereto, whichever occurs later.

K. "Federal Communications Commission" or "FCC" shall mean that agency as presently constituted by the United States Congress or any successor agency with federal jurisdiction over cable communications matters.

L. "Franchise Area" shall mean the City of Fairlawn, Ohio, as the same now or in the future may exist.

M. "Franchise Year" shall mean any twelve-month period commencing on an Anniversary Date and extending to the day immediately preceding the next subsequent Anniversary Date.

N. "Gross Receipts" shall include monthly service fees, installation charges, and all other fees or charges collected from Subscribers or Users of the Cable Communications System not specifically excluded herein. Gross Receipts shall include all revenues collected or received by the Company for providing the following services:

- (i) Regular Subscriber Service;
- (ii) Pay Television Service;
- (iii) Additional Services;
- (iv) Advertising Services; and
- (v) Home Shopping Service.

With respect to Additional Services, Gross Receipts shall include that portion of revenues collected from Subscribers or Users for Additional Services which represent fair and reasonable charges for use of the Cable Communications System by third parties (i.e. for communications between Users or between a User and the System's headend).

With respect to Advertising Services, Gross Receipts shall include all revenues received by the Company or by any affiliated entity for advertising material inserted on the Cable Communications System. Advertising Services revenues which are not directly derived from the City shall be apportioned to the City by applying to such revenues a ratio the numerator of which is the total number of Fairlawn Subscribers to the programming on which such advertising appears and the denominator of which is the total number of all Subscribers to such programming.

Gross Receipts shall not include (i) excise taxes; or (ii) sales taxes and any other taxes which are imposed on any Subscriber or User of the Cable Communications System by any governmental unit and collected by the Company for such governmental unit and which are not reflected as an operating expense by the Company.

O. "Pay Television" shall mean the delivery over the Cable Communications System of programming to Subscribers for a fee or charge over and above the charge for Regular Subscriber Service, on a per-program, per-channel or other subscription basis.

P. "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

Q. "Regular Subscriber Service" shall mean the simultaneous delivery by the Company to television receivers, or any other suitable type of audio-video communication receivers, of that service regularly offered to Subscribers, including broadcast television signals and non-broadcast signals offered to Subscribers, but excluding Additional Services and Pay Television.

R. "Street" shall mean the surface or the space above and below any public street, road, highway, alley, bridge, sidewalk or other public place or way now or hereafter held by City for the purpose of public travel and shall include other easements or rights of way now held or hereafter held by City which shall, within their proper use and meaning, entitle City and the Company to the use thereof for the purposes of installing the Cable Communications System or transmitting Cable Communications System signals over poles, wires, cables, conductors, conduits, manholes, amplifiers, appurtenances, attachments and other structures, equipment and facilities as may be ordinarily necessary and pertinent to a Cable Communications System.

S. "Subscriber" shall mean any person who receives any service delivered by the Cable Communications System.

T. "User of Cable Communications System" shall mean a person who utilizes the Cable Communications System to produce or to transmit programs or other communications to Subscribers or other Users.

U. "Service Interruption" shall mean no picture or sound at the television set of a customer due to a technical problem with the cable television system.

SECTION 3. AUTHORITY GRANTED BY FRANCHISE

In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, and consistent with the provisions of Section 4.5, inclusive, of the Fairlawn City Charter, a non-exclusive twenty (20) year franchise is hereby granted to WARNER CABLE COMMUNICATIONS INC. (hereinafter called the Company), a corporation organized under the laws of the State of Illinois, of the right to:

A. Erect, install, construct, reconstruct, maintain, operate, dismantle, test, repair, replace and use, in a safe and reliable manner, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, attachments, and other property as may be necessary and appurtenant to the Cable Communications System; and in addition, to use, operate, and provide, similar facilities or properties rented or leased by the Company from other Persons, firms, or corporations, including but not limited to, any public utility or other grantee of any franchise of the City;

B. Maintain and operate facilities and properties for the collection, transmission, conduction, amplification, conversion, and distribution, of programs and other services by use of electricity, radiation or other energy source;

C. Solicit, sell, distribute, and make a charge to Subscribers and Users within the City for connection to or use of the Cable Communications System of the Company.

D. This grant extends to the leased or rented use of poles and other facilities, overhead or underground, of any utility now or in the future operating in the City to the extent that the City has the power to do so. Any City reservation in a deed or plat for installation of utility service and ingress or egress thereto shall be deemed to permit the Cable Communications System to use such reservations.

SECTION 4. NON-ASSIGNABILITY OF FRANCHISE AGREEMENT

No portion of the rights, privileges and franchise granted hereunder may be assigned, in whole or in part, without the prior consent of the Council of the City of Fairlawn expressed by resolution or ordinance, which consent shall not be unreasonably withheld nor unduly delayed, and then only under such reasonable conditions as may therein be prescribed; provided, however, that an assignment to a parent or an affiliate entity involving no change in ownership or control may be affected without obtaining the consent of the City. No assignment to any person shall be effective until the assignee has filed with the City a notarized, unconditional acceptance of all of the terms and conditions contained herein.

SECTION 5. NON-EXCLUSIVITY OF FRANCHISE AGREEMENT

A. This franchise shall be non-exclusive and neither the granting thereof nor any of the provisions contained herein shall limit, abridge, diminish, alter, or affect, the right, privilege, power or authority of the City; and the City hereby reserves and preserves the right to grant any franchise to any person, firm or corporation, other than the Company; such franchise to contain the same material terms and conditions as are contained in this ordinance.

B. No privilege or exemption is granted or conferred except those specifically prescribed in this ordinance.

SECTION 6. CONSTRUCTION AND USE OF FACILITIES

A. Any agreement made by and between the Company and Ohio Bell Telephone Company and the Ohio Edison Company, or their successors, and any and all other holders of licenses and/or franchises from the City for the use of towers, poles and attachments thereto of said companies for the attachment of television transmission and distribution facilities, shall be subject to all existing City Charter provisions, ordinances and regulations of the City, as well as future Charter provisions, ordinances and regulations of the City that are not inconsistent with the rights and obligations contained herein or all future provisions, ordinances and regulations enacted or adopted by the City in the exercise of its police power to protect the health, safety and welfare of its residents.

B. Subject to the City's approval, the Company shall have the right to erect and maintain its own poles at locations as it may find necessary for the proper construction and maintenance of the Cable Communications System. Approval shall be procured by the Company from the proper City department providing for the erection of these poles, and the Company shall comply with such reasonable conditions as the City department may impose.

C. The Company's transmission and distribution system poles, wires, and appurtenances, shall be located, erected, and maintained, so as not to endanger or interfere with the lives of persons or to interfere with any improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, sidewalks, or other public property. Removal or relocation of poles or equipment when necessary to protect the health, safety and welfare of its residents shall be subject to the approval of the City.

D. Construction and maintenance of the Cable Communications System shall be performed in an orderly and workmanlike manner. Company shall at all times comply with the National Electrical Safety Code of the National Board of Fire Underwriters, the National Electrical Code of the National Fire Protection Association, Bell Telephone System's Code of Pole Line Construction, such applicable ordinances and regulations of the City of Fairlawn affecting electrical and structural installations which may be presently in effect or changed by future ordinance, applicable FCC or other federal, state and local regulations, and the Warner Construction Practices Manual.

E. All installation of cable distribution facilities shall be of a permanent nature, durable, installed in accordance with good engineering practice, and of such sufficient height to comply with all existing City regulations, ordinances, and State laws, so as not to interfere with the right of the public or individual property owner and shall not interfere unduly with the travel and use of public places by the public during the construction, repair, or removal thereof, and shall not unduly obstruct or impede traffic.

F. The Company shall furnish to the City, upon request and within thirty (30) days of such request, detailed maps, updated annually, of its Cable Communications System.

G. The Company shall maintain its Cable Communications System so that cables, wires, poles and other facilities shall conform to the pattern of the existing public utility cables, wires, poles and other facilities, subject to the right of the City to require relocation, either overhead or underground, of such cables, wires, poles and other facilities when the City determines that such relocation is necessary and in the public interest but not for arbitrary and capricious reasons.

H. The Company shall maintain its system so that poles, posts, and other structures of public utilities which are available shall be used to the extent practicable to minimize interference with travel. Before placing or setting poles, posts and other structures, overhead or underground, the Company shall file notice of such intention with the City and specify the location, height, and dimensions, of the poles, posts and structures and notify affected residents whose property may be disturbed. The construction shall not be commenced until the specifications have been submitted to the appropriate City agency and the Company has received its written approval, which shall not be unreasonably withheld or delayed.

I. The Company shall restore all land excavated for the purpose of installation of the cable television system to its original condition, and shall replace all damaged landscaping with equivalent product. In the case of restoration of a lawn, the owner of the property shall have the option to specify the affected area be restored by the planting of seed or the placement of sod.

SECTION 7. MAINTENANCE AND OPERATION

In the maintenance and operation of its television transmission and distribution system in the streets, alleys, and other public places, and in the course of any new construction and addition to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by the Company in the course of its operation shall be in accordance with the rules and regulations governing the making of openings in streets, sidewalks, public ways or places, of the City of Fairlawn as established by the ordinances and regulations of said City and which are in effect at that time.

SECTION 8. CONDITIONS OF STREET OCCUPANCY

A. Use -- All structures, wires, cables, equipment and facilities, overhead or underground, erected or maintained by the Company within the City shall be located as to cause minimum interference with the proper and intended use of the streets, including the accommodation of municipally owned or operated utilities and with the rights or reasonable convenience of the owners or occupiers of

property which adjoins any of such streets. The City shall have the right at no cost to use poles owned by the Company, or leased by the company to the extent that such use by the City is consistent with the Company's contractual rights to use such leased poles, for the installation and maintenance of City equipment providing police and fire protection and traffic control (e.g. affixing traffic signs) and City communications equipment, provided that such use by the City shall not interfere with the Company's operation of the System. Nothing herein shall permit the City to use the System's communications capabilities except as provided elsewhere in this franchise.

B. Restoration -- The surface of any street, devilstrip, or any other lawn area, disturbed by the Company in laying, constructing, maintaining, operating, using, extending, removing, replacing or repairing its Cable Communications System shall be restored by the Company as soon as reasonably practicable after the completion of the work, at its cost and expense, to as good a condition as before the commencement of the work. No street shall be encumbered by construction, maintenance, removal, restoration or repair work, either overhead or underground, by the Company for a longer period than shall be necessary to execute such work. If there is an unreasonable delay by the Company in restoring and maintaining streets after such excavations or repairs have been made, the City shall have the right after notice to restore or repair the same and to require the Company to pay the cost of such restoration or repair. The Company shall also, at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured by or on account of its activities to as good a condition as said property existed immediately prior to the disturbance, damage or injury.

C. Relocation -- Whenever by reason of the construction, repair, maintenance, relocation, widening, raising, lowering of the grade, or vacation of any street by the City or by the location or manner of construction, reconstruction, maintenance or repair of any public property, structure or facility by the City, or any public improvement, municipally owned or operated utility services or pursuant to any plan adopted by the City for rehabilitating any section of the City, it shall be deemed necessary by the City for the Company to move, relocate, change, alter or modify any of its facilities or structures, such change, relocation, alteration or modification shall be promptly made by the Company, at its cost and expense, when directed in writing to do so by the City, without claim for or right of reimbursement of cost or damages against the City. In the event the Company, after such notice, fails or refuses to commence, pursue or complete such relocation work within a reasonable time, the City shall have the authority, but not the obligation, to remove or abate such structures of facilities and to require the Company to pay to the City the cost of such relocation, alteration, or modification. If the Company fails to complete in a timely manner any relocation requested by the City and the City incurs any costs resulting from such delay, the Company shall be liable to the City for such costs.

D. Wire Changes -- The Company shall upon the request of any person holding a building moving permit or permit to move oversize loads issued by the City temporarily raise or lower its wires to permit the moving of buildings or oversize loads. The expense of such temporary removal or raising or lowering of the wires shall be paid by the person requesting the same and the Company shall have the authority to require such payment in advance. The Company shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire changes.

E. Tree Trimming -- The Company shall have the authority to trim trees upon and overhanging the streets of the City so as to prevent the branches of such trees from coming in contact with the Company's wires and cables. Prior to trimming any ornamental tree, Company shall make a good faith effort to contact the Utilities Commissioner or his designee, who shall respond within a twenty-four (24) hour period and provide professional assistance as to the trimming of said tree. A nonresponse by the Utilities Commissioner or his designee shall be deemed an approval for the Company to proceed with the trimming of the tree in question. Any trimming of trees shall be done in a professional manner as prescribed by the Utilities Commissioner or his designee.

F. Placement of Fixtures -- The Company shall not place poles, towers or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main, drainage facility or sanitary sewer, traffic control devices, traffic lights, fire and communication systems, and all such poles, towers and other facilities shall be placed as directed by the City, either overhead or underground, and in such manner as not to interfere with the usual travel or use of the streets.

SECTION 9. SUBJECT TO POLICE POWERS OF CITY

The construction, maintenance and operation of the Company's Cable Communications System and all property of the Company subject to the provisions of this franchise shall be subject to the exercise of all lawful police powers of the City.

SECTION 10. LEGAL OBLIGATIONS

A. The Company shall, at its sole cost and expense, fully indemnify and hold harmless the City, its officers, boards, commissions, agents and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, damages, liabilities and judgments (including costs or liabilities of the City with respect to its employees), of every kind and nature whatsoever arising out of or pertaining to the Company's construction or operation of the Cable Communications System in the City, including but not limited to damages for injury or death or damages to property, real or personal, and against all liabilities to others and against all loss, cost and expense, resulting or arising out of any of the same including any attorneys fees, accounting fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expense, all as may be reasonable, arising out of or pertaining to the Company's construction or operation of the Cable Communications System in the City.

B. The Company shall, at the sole risk and expense of the Company, upon demand of the City made by and through the Law Director, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise brought or instituted or had by third persons or duly constituted authorities, against or affecting the City, its officers, boards, commissions, agents, or employees, and arising out of or pertaining to the Company's construction or operation of the Cable Communications System in the City.

C. The Company shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand, rendered made or issued, against the Company, the City, its officers, boards, commissions, agents or employees, for the foregoing; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder or otherwise; provided that neither the Company nor the City shall make or enter into any compromise or settlement of any claim, demand, or cause of action, without consent of the other which consent shall not be unreasonably withheld.

SECTION 11. COMPLIANCE WITH APPLICABLE LAWS

All work undertaken in connection with the construction, reconstruction, maintenance, operation or repair of the Company's Cable Communications System shall be subject to and governed by all present laws, rules and regulations of the City, the State of Ohio and the United States of America, including the FCC and any other federal agency having jurisdiction, as well as future laws, rules and regulations that are not inconsistent with the rights and obligations contained herein or, with respect to the City, all future provisions, ordinances and regulations adopted in the exercise of its police power to protect the health, safety and welfare of its residents.

SECTION 12. PERFORMANCE BOND

A. The Company shall maintain at its cost and expense during the entire term of this ordinance a franchise compliance bond of a company authorized to do business in the state of Ohio, which bond is acceptable to the City, in the amount of Two Hundred Thousand Dollars (\$200,000.00) to guarantee the faithful performance of each material provision of this franchise and in consideration of the granting of this franchise.

B. The rights reserved to the City with respect to the franchise compliance bond are in addition to all other rights of the City, whether reserved by this franchise or authorized by law, and no action, proceeding or exercise of a right with respect to such franchise compliance bond shall affect any other right the City may have.

SECTION 13. PERFORMANCE STANDARDS

A. Quality of Signals -- The Company shall construct, operate and maintain its cable system according to the specifications contained in Part 76, Subpart K of the Rules of the Federal Communications Commission. See Appendix 1.

B. Stereo Television -- The Company's distribution system shall be capable of transmitting and passing the multichannel television sound (MTS) subcarriers of applicable broadcast stations. Within twenty-four (24) months after the effective date of this ordinance, the Company shall provide the encoded MTS audio signal for three of the cable television satellite services transmitting MTS signals and carried on the cable television system. Within thirty-six (36) months after the effective date of this ordinance, the Company shall provide the encoded MTS signal for six (6) of the cable television satellite services transmitting MTS signals and carried on the cable television system. Within forty-eight (48) months after the effective date of this ordinance, the Company shall provide the encoded MTS for nine (9) of the cable television services transmitting MTS signals and carried on the cable television system.

C. Future Technology -- Technological innovations in the areas of channel capacity, activated channels, converters, billing procedures, and ancillary services shall be incorporated into the cable television system offered to residents of the City, if such innovations are offered to the majority of the Company's customers in the Akron metropolitan area. The City shall have the ability to initiate discussions of such technological innovations with the Company and the Company shall have the obligation to work with the City in the evaluation of such innovations, their application to the cable television system and their technical and economic impact on the users of the system.

D. Compliance with FCC Rules -- The Company shall comply with present and future rules and regulations of the FCC or any successor agency in connection with and relating to the operation of its Cable Communications System.

E. Rated for Continuous Operation -- The Company's Cable Communications System shall be designed and rated for twenty-four (24) hour a day continuous operation.

F. Standard of Care -- The Company shall at all times employ a proper standard of care and shall install, maintain and use approved methods and devices for preventing failures or accidents which are likely to cause damages, injuries or nuisances to the public.

- G. Service and Repair -- The Company shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Insofar as possible, such interruptions shall be preceded by notice and shall occur during periods of minimum use of the Cable Communications system. The Company shall provide service only on equipment it provides for the reception and processing of signals distributed via the cable television system.
- H. Standby Power -- From and after the completion of the expansion of the System to thirty-five (35) channel capacity, the Company shall provide standby emergency power at the system's headend and at trunk amplifiers as necessary.
- I. Emergency Override -- The Company shall make available to the City the technical means to be a part of the Summit County Emergency Override System subject to the rules and procedures established by the users of the Emergency Override System.
- J. Programming Services -- The Company agrees to expand the channel capacity of the cable television system to thirty-five (35) channels, such expansion to commence three (3) months after the effective date of this franchise, with all customers converted to the expanded system no later than six (6) months after the effective date of this franchise. The Company also agrees to offer the following categories of programming services on the expanded system: Broadcast, Satellite, and Access. In the future, the Company shall provide its customers within the Fairlawn franchise area a system with a channel capacity and mix of programming services equal to that offered to the majority of the Company's customers within the Akron metropolitan area.
- K. FM Radio Service -- The Company shall make available to Subscribers, for an additional charge, an FM audio radio service.
- L. Local Origination Programming -- The Company shall develop and offer locally-originated programming that reflects the interests and concerns of Fairlawn subscribers and provides alternative programming to that which is offered by broadcast television. The Company shall continue its outreach to system service organizations as a follow-up to the Company's system ascertainment study and shall undertake local programming that reflects the cultural, educational, civic and artistic resources of the City. The Company shall conduct system ascertainment studies at least every five (5) years throughout the term of this franchise to identify the demand for additional locally-oriented programming and shall provide a report of such studies to the Mayor, President of Council and Public Utilities Commissioner. The Company shall make available additional copies of system ascertainment reports to local libraries and to the public at the City Council Clerk's office and the office of the Utilities Commissioner.
- M. Public, Educational, and Governmental Access Channels -- The Company shall make available on its system in the City, and according to the same time schedule, the same number of public, educational and government access channels available to the majority of its customers in the Akron metropolitan area.
- N. Production Facilities -- The Company shall make available to residents of the City use of the production equipment and services of the personnel, which are provided to the Summit County Public Library for the training and assistance of County residents relative to the production of public, education and government access programming. The use of such equipment and personnel services shall be governed by the rules and regulations established by the Summit County Public Library.

- O. Free Subscriber Service for Institutions -- The Company shall furnish, without installation charge and without monthly fees, Regular Subscriber Service and one (1) cable connection to:
- (i) each public and parochial school;
 - (ii) one (1) common activity area in each multiple unit senior citizen complex;
 - (iii) each branch of the Akron/Summit Public Library located within the City; and
 - (iv) each non-City government building requested by the City.
- P. Institutional Communications -- The Company shall make available to the non-profit, public service institutions (e.g. hospitals, schools, libraries) within the City the same type of institutional services as are offered to the majority of cities served by the Company in the Akron metropolitan area.
- Q. Parental Control Device -- The Company shall provide a parental control device for a reasonable charge, upon request, to any Pay Television Subscriber. Such device shall permit the Subscriber at his or her discretion to block out programming shown on pay cable channels (subscription or pay-per-view).

SECTION 14. SYSTEM INTERCONNECTION

The Fairlawn System is currently interconnected with several communities surrounding the City. Throughout the term of this franchise, the Company shall use its best efforts to interconnect the System with other area cable systems and shall assume one-half (1/2) of the cost of each such interconnection.

SECTION 15. OPERATOR'S RULES

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and to perform its obligations under this franchise and to assure uninterrupted service to all Subscribers; provided, however, such rules, regulations, terms and conditions shall not be in conflict with any of the provisions of this franchise or any ordinance of the City, the laws of the State of Ohio and the United States of America and the rules and regulations of the FCC and any other federal agency having jurisdiction and, before such rules shall become effective, they shall be subject to approval of the Fairlawn Utilities Commissioner, whose approval shall not be unreasonably withheld.

SECTION 16. MUNICIPAL SERVICE

- A. Free Subscriber Service for Municipal Buildings -- The Company shall furnish, without installation charge and without monthly fees, Regular Subscriber Service and one (1) cable connection to each municipal building requested by the City.
- B. Municipal Communications -- The Company shall make available to the City the same type of municipal communications abilities as are provided to the majority of cities serviced by the Company in the Akron metropolitan area.

SECTION 17. REGULA 2 OF RATES

Notwithstanding any of the provisions of this Section, the Company shall provide the City and Subscribers with at least thirty (30) days written notice before increasing the rates for any service.

SECTION 18. PAYMENT FACILITIES

The Company shall make available to Subscribers the option to pay service bills at one (1) location in the City, such location to be conveniently accessible to Subscribers. If future need for an additional payment location is documented by scientific survey, the City and Company agree to work together to establish such a location within the City.

SECTION 19. CYCLE BILLING

The Company shall institute a system of cycle billing for all Subscribers within six (6) months of the effective date of this ordinance.

SECTION 20. EXTENSION OF SERVICE

A. The Company agrees to make cable television service available to the Primary Service Area, which is defined as follows: The Primary Service Area shall include all the residential areas within the corporate limits of the City of Fairlawn as of the effective date of this franchise, except for the northwest area of the City approximately bounded by the roads which are known to the City and the Company as Smith Road, Cleveland-Massillon Road, Elgin Drive, and South Smith Road; and the commercial area bordering the street known to the City and the Company as Market Street. As part of its commitment to make service available to the Primary Service Area, the Company shall, immediately after the effective date of this ordinance, commence activities to make service available to those residences in the area of the City known to the City and the Company as West Hampton Estates and shall complete service availability to this area no later than one (1) year after the effective date of this ordinance. Further, the Company shall make service available to all residents of the Primary Service Area no later than three (3) years after the effective date of this ordinance.

B. The Company shall make service available outside of the Primary Service Area if the average density of occupied housing units per linear mile of the new distribution system is equal to or greater than the average density of occupied dwelling units of the distribution system within the Primary Service Area, and if the Company is able to obtain, acquire or be granted the use of easements necessary to make service available to the area in question.

SECTION 21. SUBSCRIBER COMPLAINTS

A. During the term of this franchise, the Company shall maintain a business office in the County of Summit for the purpose of receiving and resolving all complaints regarding the quality of service, equipment malfunctions, billing inquiries and similar matters. The office must be reachable by a local, toll-free telephone call to receive complaints regarding quality of service, equipment malfunctions, billing inquiries and similar matters. The local office shall be open to receive inquiries or complaints from Subscribers during normal business hours, and in no event less than 9:00 AM to 5:00 PM, Monday through Friday, excluding legal holidays or Company-wide holidays. The Company shall provide trained personnel to receive and process telephone and in-person calls concerning service problems during normal business hours. Outside of normal business hours, the Company shall provide a competent answering service to receive telephone calls concerning service problems, and shall also provide trained personnel to immediately respond with appropriate action if three (3) or more service interruptions are reported in the same residential area.

The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be made available for the periodic inspection by the City. Upon the request of a subscriber, the Company shall provide a pro-rate rebate for service interruptions of more than twenty-four (24) hours.

B. As Subscribers are connected or reconnected to the Cable Communications System, the Company shall, by appropriate means, such as a card or brochure, furnish information concerning the procedures for making inquiries or complaints, including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed, and furnish information concerning the City office responsible for the administration of the franchise, including but not limited to, the address and telephone number of said office.

C. When there have been similar complaints made, or where there exists other evidence, which in the judgment of the City casts doubt on the reliability or quality of the cable service, the City shall have the right and authority to require that the Company test, analyze, and report on the performance of the system. The Company shall fully cooperate with the City in performing such testing and shall prepare results and a report, if requested, within five (5) days after notice. Such report shall include the following information:

1. The nature of the complaint or problem which precipitated the special tests.
2. What system component was tested.
3. The equipment used and procedures employed in testing.
4. The method, if any, in which such complaint or problem was resolved.
5. Any other information pertinent to said tests and analysis which may be required.

D. The City may require that tests be monitored by a professional engineer selected by the City. The engineer shall sign all records of special tests and forward to the City such records with a report interpreting the results of the tests and recommending actions to be taken. The cost of the engineering services shall be borne by the Company. Notwithstanding the above, the maximum cost to be borne by the Company under the requirements of this subsection during the term of this franchise shall be \$2,500.00.

E. Excepting circumstances beyond the Company's reasonable control, such as acts of God, war and civil disturbances, the Company shall render prompt and efficient service in making repairs and shall interrupt service only for good cause and for the shortest time possible. Scheduled interruptions for maintenance or repair of the System, insofar as possible, shall be preceded by notice given to Subscribers at least twenty-four (24) hours in advance and shall occur during periods of minimum use of the system.

SECTION 22. INTERFERENCE WITH CABLE SERVICE PROHIBITED

Neither the owner of any multiple unit residential dwelling, including, but not limited to, high rise apartment buildings, townhouse developments and trailer parks, nor his agent or representative shall interfere with the right of any tenant or lawful resident thereof to receive cable communications service, cable installation, or maintenance from a cable communications company regulated by and lawfully operating under a valid and existing cable communications franchise issued by the City.

SECTION 23. PENALTIES & CHARGES TO TENANTS FOR SERVICE PROHIBITED

Neither the owner of any multiple unit residential dwelling, including, but not limited to, high rise apartment buildings, townhouse developments and trailer parks, nor his agent or representative shall penalize, charge, or surcharge a tenant or resident or forfeit or threaten to forfeit any right of such tenant or resident, or discriminate in any way against such tenant or resident who requests or receives cable communications service from a franchisee operating under a valid and existing cable communications franchise issued by the City. No resident of any multiple unit residential dwelling who is ready and willing to pay for service shall be denied cable communications service furnished under a valid and existing franchise issued by the City, provided that cable service is existing in building.

SECTION 24. GRATUITIES AND PAYMENTS TO PERMIT SERVICE PROHIBITED

Neither the owner of any multiple unit residential dwelling, including, but not limited to, high rise apartment buildings, townhouse developments and trailer parks, nor his agent or representative shall ask, demand, or receive any payment, service, or gratuity in any form as a condition for permitting or cooperating with the installation of a cable communications service to the dwelling unit occupied by a tenant or resident requesting service.

SECTION 25. DISCONTINUANCE OF SERVICE

A. The Company agrees that any Subscriber may discontinue service without penalty by reason of such discontinuance.

B. The Company may disconnect installations and discontinue service to a Subscriber upon failure by the Subscriber to pay his/her bill within forty-five (45) days of rendition; provided, however, the Company shall give at least five (5) days written notice to such delinquent Subscriber, delivered either by mail or served in person, stating that service will be discontinued unless arrearages are paid before the expiration of the forty-five (45) day period.

C. The Company may disconnect installations, discontinue or deny service to a Subscriber who operates or attempts to operate a television set on an installation for which no service fees are being paid, or permits anyone else to do the same, or who threatens the safety of any Company employees.

SECTION 26. FAILURE TO PROVIDE SERVICE

If, within thirty (30) days after the payment of any installation charge by any Subscriber, the Company fails to operate its system or make its service available to such Subscriber on a regular and continuous basis, the Company shall refund to such Subscriber the installation charge together with interest thereon at the statutory rate applied to the collection of legal judgments.

SECTION 27. CONTINUITY OF SERVICE MANDATORY

A. The company shall be obligated during the entire term of this franchise to provide reasonable and adequate service to all Subscribers, consistent with the provisions of Section 26 hereof.

The obligation of the Company to provide reasonable and adequate service to Subscribers shall not be limited, altered or modified by any actions of the Company to overbuild, rebuild, modify or sell the System. The Company shall act so as to ensure that all Subscribers receive continuous, uninterrupted service throughout the term of this franchise. In the event of a change of System operator, the Company shall maintain continuity of service to all Subscribers prior to the date on which the change of operators is effectuated. Throughout the term of this franchise the Company shall be entitled to the revenues for and during the period it operates the System.

B. In the event the Company fails to operate the System for any material period of time without prior approval of the City or without just cause, in addition to any other remedies provided herein or by law the City may, at its option, operate the System or designate an operator until such time as the Company restores service under conditions acceptable to the City or a permanent operator is selected. If the City is required to fulfill this requirement for the Company, the Company shall reimburse the City for all reasonable costs or damages, in excess of revenues from the System received by the City, that are the result of the Company's failure to perform.

SECTION 28. PROHIBITION OF DISCRIMINATORY OR PREFERENTIAL PRACTICES

In its rates or charges, or in making available the services or facilities of the Cable communications System, or in its rules or regulations, or in any other respect, the Company shall not make or grant preference or advantage to any Subscriber or potential Subscriber of the Cable communications System and shall not subject any such person to any prejudice or disadvantage. This provision shall not be deemed to prohibit bulk discounts or promotional campaigns to stimulate subscriptions to the Cable Communications System.

SECTION 29. AFFIRMATIVE ACTION HIRING PRACTICES

The Company shall make a positive effort to hire qualified minority employees and subcontractors and shall not use discriminatory hiring practices and shall be bound by any ordinances or laws regarding equal employment opportunities in accordance with the Fairlawn practice. The Company agrees to be bound by its equal employment opportunity program. Throughout the term of this franchise, the Company shall consult with affected community service organizations to assure the continued effectiveness of its affirmative action program.

SECTION 30. FRANCHISE FEE PAYMENTS

A. Consistent with all applicable laws, the Company shall pay to the City five percent (5%) of the Gross Receipts from all sources received from the operations of the System within the City of Fairlawn. Said percentage of gross receipts to be allocated to the Parks Capital Improvement Fund within the City of Fairlawn. Should the rules and regulations of the Federal Communications Commission or any successor agency require prior approval of payment of such a fee or any portion of such a fee, the company shall cooperate with the city in the City's application for such approval.

B. Franchise fee liability shall be based upon Gross Receipts for each three-month period ending March 31, June 30, September 30, and December 31 of each calendar year. The franchise fee payment for each such calendar quarter shall be due and payable no later than the thirty (30) days after the close of such quarter. Each payment shall be accompanied by a certified report showing the basis for the computation. Said certified report shall be filed with the Utilities Commissioner.

Then how can they pass this fee as charge to customers?

SECTION 31. SUBMISSION OF REPORTS AND FINANCIAL STATEMENTS

The company shall provide to the Utilities Commissioner, on an annual basis, a statement of numbers of Subscribers, numbers of homes passed, number of miles operated and the net annual increase or decrease in each category over the preceding year in Fairlawn. Said reports shall be filed by January 31 for the preceding year. Additionally, the Company shall provide to the Utilities Commissioner, upon request, monthly, quarterly and annual financial and operating statements in such detail and form as the Utilities Commissioner may require.

SECTION 32. LIABILITY INSURANCE

A. Minimum Coverage -- Within thirty (30) days after the effective date of this franchise, the Company shall file with the City and shall maintain on file throughout the term of this franchise a certificate of insurance issued by a company duly authorized to do business in the State of Ohio insuring the City and the Company with respect to the installation, maintenance and operation of the Company's Cable Communications System in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for property damage and personal bodily injury. The City of Fairlawn shall be named as an additional insured in any such policy of insurance.

B. Notice of Cancellation or Reduction -- The certificate of liability insurance shall contain the provision that written notice of expiration, cancellation or reduction in coverage of the insurance shall be delivered to the City and to the Company at least thirty (30) days in advance of the effective date thereof.

SECTION 33. PRIVACY

A. The Company shall comply with the following privacy provisions:

- (1) The Company shall respect the rights of privacy of every Subscriber of the Cable system. The Company shall maintain adequate safeguards to ensure the physical security and confidentiality of any Subscriber information.
- (2) Individual Subscriber viewing or responses may be recorded only where necessary to permit billing or to render a Subscriber service or in connection with the compilation of bulk (non-individual) information. Any such individualized information concerning viewing or responses will be kept strictly confidential unless publication is an inherent part of the service (e.g., announcing a game show prize winner). No other individualized information concerning viewing or responses will be developed unless the Subscriber has been advised in advance and given adequate opportunity not to participate.

- (3) The Company shall not make bulk (non-individual) data available to third parties -- whether affiliated or nonaffiliated with the Company -- without first ensuring that the identity of individuals is not ascertainable from the data provided.
 - (4) The Company shall not make available to any party -- whether affiliated or non-affiliated with the Company -- Subscriber mailing lists without first providing Subscribers with the opportunity to have their names removed from such lists.
 - (5) The company shall refuse requests to make any individual Subscriber information available to government agencies in the absence of legal compulsion, i.e., court order, subpoena. If requests for such information are made, the Company will promptly notify the Subscriber prior to responding if permitted to do so by law.
 - (6) Subscribers may examine and copy any information developed by the Company pertaining to them at the Company's premises upon reasonable notice and during regular business hours. Copying costs shall be borne by the Subscriber. The Company shall correct such records upon a reasonable showing by the Subscriber that information contained therein is inaccurate.
 - (7) Any individual Subscriber information will be retained for only so long as is reasonably necessary, e.g. to verify billings.
- B. The City and the Company will continually review this section to determine whether it effectively addresses appropriate concerns about privacy. This section may be amended periodically by agreement of the City and the Company.
- C. Nothing contained herein shall restrict or limit the right of the City to obtain from the company any and all Subscriber records which are necessary in order to permit the City to investigate and evaluate Subscriber complaints or other aspects of the Company's service obligations to the public, provided that the City shall maintain the privacy rights of Subscribers set forth in this Section.

SECTION 34. PERFORMANCE EVALUATION SESSIONS

- A. The City may, at its discretion, undertake a compliance audit and a customer satisfaction survey during the fifth, tenth, and fifteenth years following the effective date of this franchise ordinance. The Company shall reimburse the City for all reasonable costs incurred by the City for employing an outside consultant for such a purpose; such total reimbursement not to exceed \$3,000.00, (\$1,000.00 per occurrence), during the term of this franchise.
- B. Special evaluation sessions may be held at any time during the term of the franchise at the request of the City or the Company.
- C. All compliance audit and customer satisfaction survey reports, as well as summaries of evaluation sessions prepared by the party requesting such sessions shall be presented to the City Council in written form. A committee of Council designated by the President of Council shall review such reports at a public hearing announced in a newspaper of general circulation in accordance with legal notice. The Company shall have the right to present any information it deems appropriate to such committee at such hearing. The Company shall be provided with a copy of all written reports at least sixty (60) days prior to any public hearing thereon. The Company shall notify its Subscribers of such hearing by announcement on at least one (1) channel of its System between the hours of 7:00 AM and 9:00 PM for five (5) consecutive days preceding such hearing.
- D. Topics which may be discussed at any scheduled or special evaluation session may include, but not be limited to, service rate structures, franchise fee, penalties, free or discounted service, application of new technologies, system performance, services provided, programming offered, customer complaints, privacy, amendments to the franchise, judicial and FCC rulings, line extension policies, and Company or City rules.

- E. During the review and evaluation by the City, the Company shall fully cooperate with the City and shall

F. At least six (6) months preceding the dates specified in this franchise for completion of any capital improvements to the Cable Communications System, the Company may review with the City the costs of such improvements and such other factors as the Company may deem necessary to evaluate whether such proposed capital improvements are appropriate in light of the circumstances at that time. Following such review, the City may amend the franchise to relieve the Company of such requirements, in whole or in part, or may approve an appropriate extension, but may not unilaterally make the requirements more stringent. The review provided for in this section shall not extend nor authorize any delay in the completion of the capital improvements required by this franchise in the absence of a modification thereof by written agreement of the City and the Company.

SECTION 35. REVOCATION OF FRANCHISE

In addition to all other rights and powers of the City by virtue of this franchise or otherwise, the City reserves the right to terminate and cancel this franchise and all rights and privileges of the Company hereunder in any of the following events or for any of the following reasons:

A. Violations Of Provisions -- The Company, by act or omission, violates any material term, condition or provision of this franchise.

B. Insolvency -- The Company becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or all or part of the Company's facilities should be sold under an instrument to secure a debt and are not redeemed by the Company within thirty (30) days from the date of such sale; provided, however, this shall not be an event of termination or cancellation in the event bankruptcy proceeding and the trustee, receiver or debtor in possession agrees in writing to be bound by the terms of this franchise.

C. Fraud -- The Company attempts to or does practice any fraud in its conduct or relations under this franchise with the City, Subscribers or potential Subscribers.

D. Method of Termination and Cancellation -- Any such termination and cancellation of this franchise shall be by ordinance adopted by City; provided, however, before any such ordinance is adopted, the Company must be given at least sixty (60) days advance written notice, which shall set forth the causes and reasons for the proposed termination and cancellation and shall advise the Company that it will be provided an opportunity to be heard by City regarding such proposed action before any such action is taken, and shall set forth the time, date and place of the hearing. In no event shall such hearing be held sooner than thirty (30) days following delivery of such notice to the Company.

E. Force Majeure -- Other than its failure, refusal or inability to pay its debts and obligations, including, specifically, the payments to the City required by this franchise, the Company shall not be declared in default or be subject to any sanction under any provision of this franchise in those cases in which performance of such provision is prevented by reasons beyond its reasonable control.

SECTION 36. COMPANY TO HAVE NO RECOURSE

A. Requirements and Enforcement -- Except as expressly provided herein, the Company shall have no recourse whatsoever against the City for any loss, cost, expense or damage arising out of the provisions or requirements of this franchise or because of the enforcement thereof by the City or because of the lack of City authority to grant all or any part of the franchise.

B. Construction of Franchise -- By acceptance of this franchise, the Company acknowledges that it has carefully read the provisions hereof and is willing to and does accept all the provisions and terms hereof.

SECTION 37. SEVERABILITY

If any section, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of this ordinance.

SECTION 38. NOTICES

All notices from the Company to the City pursuant to this franchise shall be given to the Mayor and Utilities Commissioner. The Company shall maintain with the City throughout the term of this franchise an address for service of notices by mail.

SECTION 39. REPEAL OF ORDINANCES

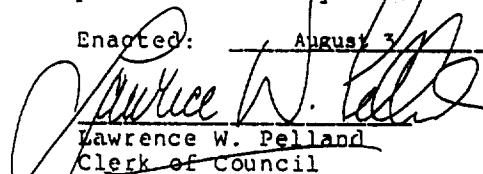
Ordinance 1972-129 and all other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

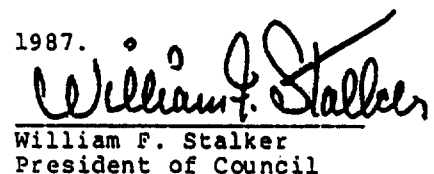
SECTION 40: For reimbursement of the expense incurred by the City in the formulation and negotiation of this ordinance, the Company agrees to pay to the City an acceptance fee of \$16,000.00, such payment to be made within thirty (30) days of the effective date of this ordinance. Said acceptance fee shall be allocated by the City to the Parks Capital Improvement Fund.

SECTION 41: That it is hereby found and determined that this legislation complies with Section 121.22 ORC regarding notification of meetings and all deliberations of this Council pertaining hereto have been conducted in accordance therewith.

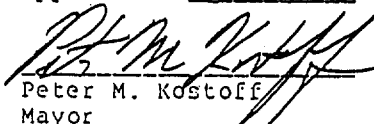
SECTION 42: This Ordinance shall be in full force and effect from and after its enactment and approval by the Mayor or at the earliest period allowed by law.

Enacted: August 3, 1987.

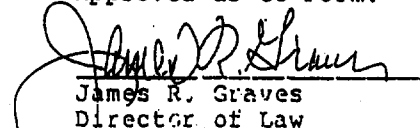

Lawrence W. Pelland
Clerk of Council


William F. Stalker
President of Council

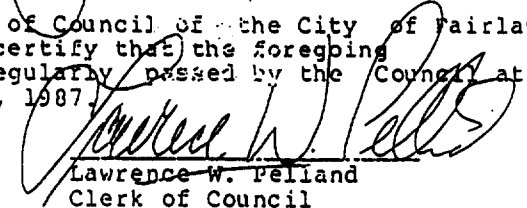
Approved: August 4, 1987


Peter M. Kostoff
Mayor

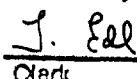
Approved as to Form:


James R. Graves
Director of Law

I, Lawrence W. Pelland, Clerk of Council of the City of Fairlawn, Summit County, Ohio, do hereby certify that the foregoing Ord. 1987-65 was duly and regularly passed by the Council at a Regular Meeting on August 3, 1987.


Lawrence W. Pelland
Clerk of Council

This is to certify that on 8-11-87 the
within Ordinance/Resolution was published by
posting a true copy of the same in five public
places within the City as prescribed in Section 222.03 (a), Cof.


Clerk

1987-65

67-02-1

See Attached
Resolution &
Ordinance of
Stow, OH City Council

2-25-94

MEETINGS OF NOTE

STOW, AKRON BEACON JOURNAL

Parker changes vote on cable resolution

The Stow City Council met twice Thursday night.

The council had adjourned after approving a resolution to send to the Federal Communications Commission protesting unreasonable rates for expanded cable television service.

It then was discovered that the council needed six favorable votes on the resolution instead of the five it had received. The council quickly reconvened and approved the resolution again with six favorable votes.

Councilman Tom Parker, who changed his vote, said he voted against the resolution initially because he did not believe the rates were unreasonable. He then voted for it so the resolution could be sent to the FCC.

The council, during the first session, granted a conditional zoning certificate and site plan for a Wendy's restaurant next to the Darrow Road entrance of the Towne Center shopping plaza.

— DOLORES CLAY

Stow, OH Resolution Passed by City Council

RESOLUTION NO. 1994-78

REQUESTED BY ORRIS
APPROVED BY PUB. IMP. COM.
INTRODUCED BY ORRIS

A RESOLUTION AUTHORIZING THE CITY OF STOW TO SUBMIT NECESSARY FORMS TO THE FEDERAL COMMUNICATIONS COMMISSION REGARDING UNREASONABLE RATES CHARGED FOR OTHER CABLE TELEVISION PROGRAMMING SERVICES (A/K/A THE EXPANDED BASIC TIER); AND DECLARING AN EMERGENCY.

WHEREAS, on April 1, 1993, the Federal Communications Commission adopted a Report and Order and Further Notice of Proposed Rule-making, in MM Docket No. 92-266, implementation of sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, FCC No. 93-177, released May 3, 1993, effective September 1, 1993, ("FCC regulations") which describes a process whereby franchising authorities may issue complaints to the FCC regarding the rates charged by existing cable television operators for other cable programming services (a/k/a the expanded basic tier); and

WHEREAS, the City, as franchising authority, has determined that the existing rates for the expanded basic tier are "unreasonable" and the only method of determining whether the rates are within FCC guidelines and obtaining relief is for the City to file a complaint with the FCC regarding the rates charged for the expanded basic tier; and

WHEREAS, the City has reviewed FCC complaint Form 329 and determined that the City has the authority to complete and submit said form to the FCC; and

WHEREAS, the City has determined that its best interests will be served by moving forward in an expeditious manner to submit Form 329 to the FCC to avoid potential rate increases which may result in higher overall rates charged to cable television subscribers within the City and to meet a deadline of February 28, 1994 set by the FCC for filing complaints as to current rates;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOW, COUNTY OF SUMMIT, STATE OF OHIO:

SECTION 1. That the Mayor is hereby authorized to submit all applicable forms to the FCC regarding existing rates for the expanded basic tier. No further action or approval by the City Council shall be required for execution of any and all appropriate forms to be submitted to the FCC for the above-described purpose.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions, were in meetings open to the public, and in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution was adopted pursuant to Section 4.11, Charter, and is hereby declared to be an emergency measure necessary for the immediate preservation of the public health and safety for the reason that in order to protect the City's cable television subscribers from possible excessive rates and to meet the deadline of February 28, 1994 set by the FCC for filing Form 329 regarding existing rates, and, pursuant to Section 4.13, Charter, shall take effect upon its adoption by Council and approval by the Mayor, otherwise at the earliest period allowed by law.

- B. Upon adoption of this Ordinance, the Clerk of Council will send to Warner and each operator of a cable television system in the City, via Certified Mail, Return Receipt Requested, a written notice, which shall include a copy of this Ordinance and notice that the City is certified by the FCC to regulate the cable television rates authorized by the Ordinance.
- C. Within thirty (30) days after receipt of the aforesaid notice, Warner and any other cable television operator shall have thirty (30) days to respond with rate and benchmark information utilizing FCC Form 393 -- Determination of Maximum Initial Permitted Rates for Regulated Cable Services and Actual Cost of Equipment.
 - 1. If the initial rates and/or any subsequent rate increases are within the FCC standards, the rates will be effective thirty (30) days after submission.
 - 2. If the City is unable to determine whether the rate at issue is within the FCC's standards, based on the material before it, or if Warner or any other cable operator has submitted a cost-of-service showing seeking to justify a rate above the FCC's reasonable rate level, the City may take an additional period of time to make a final determination and toll the effective date of the proposed rates for a commensurate period.
 - a. The City may take an additional ninety (90) days if it needs more time to ensure that a rate is within the FCC's rate standards.
 - b. The City may take an additional one hundred fifty (150) days to evaluate a cost-of-service showing seeking to justify a rate above the reasonable rate level.
 - c. The City, through the Mayor or his/her designee, must issue a brief written decision regarding its invocation of the additional time period.
 - 3. In all cases, the City will issue a written decision to approve the rate schedule, disapprove the rate schedule or continue for review.
 - 4. If rates are in excess of the FCC's standards, the rates may be reduced by the City pursuant to applicable FCC regulations.
- D. After the initial rate schedule procedures are followed, as described in this Section, Warner and/or any other cable operator shall, in conjunction with each change in the rates and charges applicable to basic cable service, conform to the standards of the FCC. Before any rate change is effective, Warner and/or any other cable operator shall notify the City of its requested rate change by giving the City at least thirty (30) days advance written notice before the change is effective and by providing the City with its rates and applicable information pursuant to FCC regulations.
- E. To the extent specifically permitted by federal law and applicable FCC rules, Warner and/or any other cable operator shall be permitted to appeal to the FCC for a review of the decision of the City.

SECTION 3.

- A. That the City may utilize a rate consultant to advise it on proposed rate changes and to assist it in the procedures and the standards for review adopted by the FCC. A rate consultant may be any person who has sufficient background and experience, in the sole opinion of the City, to properly evaluate and analyze rates and charges.